

United States
Court of Appeals
for the Ninth Circuit

NAT YANISH, WILLIAM HEIKKILA, JOHN
VOICH, JOHN DIAZ, HERMAN LANS-
BURG and FRANK CARLSON,
Appellants,

vs.

I. F. WIXON, Individually, and as District Di-
rector, Immigration and Naturalization Service,
Department of Justice,
Appellee.

Transcript of Record

Appeal from the United States District Court
for the Northern District of California,
Southern Division

FILED

MAR 28 1949

PAUL P. O'BRIEN,



United States
Court of Appeals
for the Ninth Circuit

NAT YANISH, WILLIAM HEIKKILA, JOHN VOICH, JOHN DIAZ, HERMAN LANSBURG and FRANK CARLSON,
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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Attorney for Defendant and Appellee.

In the District Court of the United States, Northern
District of California, Southern Division

In Equity—No. 28347-H

NAT YANISH, WILLIAM HEIKKILA, JOHN
VOICH, JOHN DIAZ, and HERMAN LANS-
BURG, FRANK CARLSON,

Plaintiffs,

vs.

1. F. WIXON, individually, and as District Director,
Immigration and Naturalization Service,
Department of Justice,

Defendant.

COMPLAINT FOR REVIEW OF AGENCY
ACTION AND FOR INJUNCTIVE RELIEF

Plaintiffs complaining of defendant allege as follows:

I.

This action seeks a review of the action of the Immigration and Naturalization Service of the Department of Justice in and for the 13th Immigration District, which District includes the territory within the jurisdiction of this Court, an agency of the Federal Government acting by the defendant Wixon, in denying to the plaintiffs herein the right to be heard before a hearing officer appointed, qualified, and acting under and pursuant to § 5(c) and §§ 7, 8, and 11 of the Administrative Procedures Act (60 Stat. 243, 5 U.S.C.A. §§ 1001 et seq., hereinafter called the Act; a stay of agency proceedings except before an officer appointed in con-

formance with the Act; and an injunction against the defendant Wixon, restraining him from denying to plaintiffs their rights as secured by the said Act and by the Fifth Amendment to the Constitution of the United States.

Jurisdiction is conferred upon this Court by § 10 of the Act, 60 Stat. 243, 5 U.S.C.A. § 1009 and 28 U.S.C.A. § 1331.

II.

This action arises under the Fifth Amendment to the Constitution of the United States and under the provisions of the Act, 5 U.S.C.A. §§ 1001 et seq. as hereinafter more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$3,000.

III.

Plaintiffs herein are aliens, of various nationalities, resident in the United States.

IV.

Defendant I. F. Wixon is the District Director of the Immigration and Naturalization Service of the Department of Justice for the 13th Immigration District of the United States, which includes the territory within the jurisdiction of this Court. He is the officer of the Service in direct charge of the agency proceedings complained of herein. That he is located and has a place of business in the City and County of San Francisco, State of California, and is within the jurisdiction of the above-entitled Court.

V.

At various times past the defendant I. F. Wixon caused to be served upon plaintiffs herein, with the exception of the plaintiff Lansburg, warrants of arrest in which it was alleged that plaintiffs were aliens and subject to deportation and that pursuant thereto, plaintiffs were taken into custody and held for hearing.

That thereafter, proceedings for the deportation of the plaintiffs herein were conducted by the agents of the defendant in the City and County of San Francisco, State of California.

VI.

That no persons, including the plaintiffs, may be deported save after an adjudication required by statute to be determined on the record after opportunity for an agency hearing.

That the provisions of § 5 of the Act provide that such hearings shall be conducted in accordance with the provisions of §§ 7 and 8 of said Act, and that no hearing officer who is responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the investigative or prosecuting functions of the agency shall preside at the hearing.

§ 7 requires, among other things, that such hearing shall be conducted in an impartial manner, and § 11 requires, among other things, that the hearing officer shall be assigned in rotation from among a panel of competent examiners qualified subject to the Civil Service and other laws of the United States.

Neither the presiding inspector appointed to preside over the hearing herein, nor any other inspector of the Service, has been appointed to or holds office in accordance with § 11 of the said Act, nor do they possess the qualification and authority set forth in §§ 5(c), 7, and 8 thereof.

VII.

That prior to the 7th day of May, 1948, plaintiffs, by their attorneys, Gladstein, Andersen, Resner & Sawyer, objected, in the course of the said hearings, to the proceedings on the grounds that they were not conducted in conformity with requirements of the Act as set forth above. That on May 7, 1948, plaintiffs, by their attorneys, by letters to the Immigration and Naturalization Service at 630 Sansome Street, San Francisco, California, and specifically directed to Stan Olson, Chief of the Expulsion Section, which letters were identical in content, an agent of the defendant herein, renewed their objections to the proceedings on the grounds that they did not comply with the said Act. A copy of one of the said letters is attached hereto, marked Exhibit A, and is hereby incorporated in this complaint as though set forth in full herein.

That thereafter, in reply to the said letters, defendants by their agent Robert S. DeMoulin informed plaintiffs herein, by identical letters directed to plaintiffs' attorneys dated May 18, 1948, a copy of one of which is attached hereto and incorporated herein and marked Exhibit B, that hearings in the

proceedings against plaintiffs herein had been deferred pending further instructions from the central office of the Service.

That thereafter on or about September 9, 1948, defendant by his agent Stan Olson, demanded of plaintiffs by identical letters, a copy of one of which is attached hereto and incorporated herein and marked Exhibit C, that they appear at the office of the Service in San Francisco, California, on certain named dates in October, 1948, for further hearings in the said deportation proceedings. That thereafter on September 15, 1948, defendant by his agent Stan Olson informed plaintiffs, by a letter directed to their attorneys, a copy of which is attached hereto and made a part hereof and marked Exhibit D, of a decision dated July 28, 1948, of the Honorable Alexander Holtzoff, Associate Justice, District Court of the United States, for the District of Columbia an Act No. 3420, to the effect that the Act does not apply to deportation proceedings. That defendant by this letter implied and threatened that further proceedings would be conducted against plaintiffs herein without compliance with the Act.

That, as set forth in the affidavit of Lloyd E. McMurray, attached to this complaint, marked Exhibit E, and made a part hereof as though fully set forth herein, defendant threatens to conduct the said deportation proceedings from which dates in October, 1948, have been set, without in any way complying with the provisions of said Act.

VIII.

The regulations of the Service do not provide that an appeal from a ruling that the Act does not apply will render said ruling inoperative pending appeal, but on the contrary, the hearings will proceed despite said appeal.

That the proceedings for deportation heretofore conducted by the defendant against the plaintiffs herein, without conformance to the provisions of the Act, and the refusal of defendant to sustain plaintiffs' objections to such procedure, constitute a ruling that the Act does not apply, and such ruling is final agency action for which review is provided in § 10 of the Act.

IX.

The defendant intends to conduct the deportation hearings of plaintiffs before a presiding officer who is responsible to and subject to the supervision and direction of defendant, his officers, employees or agents who are engaged in the performance of investigative and prosecuting functions of the defendant; who is not able to conduct such hearings in an impartial and independent manner; who has not been qualified as a competent examiner subject to the Civil Service and other laws of the United States; who has not been assigned to the hearing of plaintiffs' cases in rotation, but, on the contrary, has been specifically selected by defendant for the purpose of presiding over plaintiffs' hearing; and otherwise the defendant proposes completely to disregard the provisions of the Act and the safe-

guards for a fair hearing afforded to the plaintiffs hereunder.

By reason of the foregoing, the said hearing will be wholly void. Nevertheless, the hearings and proceedings contemplated by the defendant will take approximately two years or more. The acts of the defendant constitute an immediate threat to plaintiffs' liberty and expose them to irreparable injury, and they are suffering legal wrong and are adversely affected and aggrieved thereby and denied rights secured to them by the Act and by the Fifth Amendment to the Constitution of the United States in that the defendant will compel them by his proposed action to submit to the hearings before such illegally designated and purported hearing officer under penalty of imprisonment.

In consequence of said threatened loss of liberty, plaintiffs are threatened with the deprivation of the opportunity to earn a livelihood.

X.

The action by the defendant requiring and compelling plaintiffs to appear and to submit to a hearing before an inspector appointed, assigned and acting in violation of the Act is in excess of the jurisdiction of the Service, for which there is no relief other than that which may be allowed through the equity powers of this Court and through its power to review agency action as set forth in § 10 of the Act.

XI.

The action of the defendant in thus threatening the plaintiffs with loss of liberty and property will cause them irreparable injury, for which there is no adequate remedy at law.

Wherefore, plaintiffs pray for judgment restraining the defendant, his agents, representatives, employees, and attorneys, from conducting or pursuing further proceedings against the plaintiffs, upon the warrants heretofore issued, seeking plaintiffs' deportation, except before a hearing officed appointed and assigned in accordance with the provisions of the Act, and except in the manner required by the Act.

Pending the trial of this action plaintiffs pray for an interlocutory injunction restraining the defendant, his agents, representatives, and attorneys, from proceeding with the hearing of the charges alleged in the warrants of arrest, and for such other necessary and appropriate relief as may be necessary to preserve the status and rights of the parties, pending the determination of this judicial review of agency action, except that no restraint shall apply to hearings or other proceedings conducted in compliance with the terms of the Act.

In addition, plaintiffs pray that pending the hearing of the motion for an interlocutory injunction, to avoid irreparable loss and damage to the plaintiffs, and to preserve the status and rights of the parties, and to preserve the controversy and jurisdiction of the Court, plaintiffs pray for a temporary

restraining order to the like effect as the interlocutory injunction prayed for herein, and for such other, further, and different relief as to the Court may seem just and proper.

Dated October 5, 1948.

GLADSTEIN, ANDERSEN,
RESNER & SAWYER,

By /s/ LLOYD E. McMURRAY,
Attorneys for Plaintiffs.

(Duly Verified.)

EXHIBIT "A"

May 7, 1948

Immigration and Naturalization Service
630 Sansome Street
San Francisco 11, California

Attention: Stan Olson, Chief Expulsion Section
Re: Nathan Yanish—File No.

Gentlemen:

As we have previously advised you in this proceeding, we were always of the opinion that the Administrative Procedure Act required the appointment of an impartial examiner to sit in each of these cases, and in this case, as well as in the other cases pending in which we represent the alleged aliens, our motions for compliance with the Administrative Procedure Act have been denied.

You, of course, have been advised of the decision of Judge Goldsborough in Washington, D. C. in the Eisler case. Judge Goldsborough has decided the precise point presented by the facts of this case, and we not only charge in this case the fact of

non-compliance with the Administrative Procedure Act, but now again direct the matter to your attention, and we intend this letter as a motion to strike all testimony heretofore taken in this proceeding.

I assume that it will be the intention of the department to hold these cases in abeyance pending further study by your department, and we suggest that you immediately advise us of your intentions.

Very truly yours,

.....

GRA :ck

EXHIBIT "B"

U. S. Department of Justice
Immigration and Naturalization Service
San Francisco 11, California

File Number 245-P-71340

May 18, 1948

Messrs. Gladstein, Andersen, Resner & Sawyer
240 Montgomery Street
San Francisco, California

Attention: Mr. George R. Andersen

Re: Nathan Yanish

Gentlemen:

Please be informed that hearing in your above-named client's case has been deferred pending further instructions from our Central Office.

Very truly yours,

For the District Director

/s/ ROBERT S. DE MOULIN,

Acting Chief, Expulsion Section.

CC: Mr. Nathan Yanish, 4071 Waterhouse Road,
Oakland, California.

EXHIBIT "C"

U. S. Department of Justice
Immigration and Naturalization Service
San Francisco 11, California
630 Sansome Street
September 9, 1948

245-P-71340

Registered mail—return receipt requested.

Nat Yanish (Noyach Yanishevsky)
4071 Waterhouse Road

Oakland, California

Dear Sir:

This communication will constitute a formal demand upon you for your appearance for hearing at this office, Room 1017, Appraisers Building, 630 Sansome Street, San Francisco, California, at 9:00 a.m., Monday, October 4, 1948.

Failure to appear in accordance with the foregoing demand may result in the recommendation that the bond executed by you on October 17, 1946 be declared breached and the penalty forfeited.

Yours very truly,

For the District Director

/s/ STAN OLSON,
Chief, Expulsion Section.

CC: Richard Gladstein, Attorney at Law, 240
Montgomery Street, San Francisco 4, California.

EXHIBIT "D"

U. S. Department of Justice
Immigration and Naturalization Service
San Francisco 17, California

September 15, 1948

Gladstein, Andersen, Resner & Sawyer
Attorneys at Law
240 Montgomery Street
San Francisco, California

Re: Nat Yanish, et al.

Gentlemen:

There is attached hereto Decision dated July 28, 1948 of the Honorable Alexander Holtzoff, Associate Justice, District Court of the United States for the District of Columbia, Civil Division, Washington, D. C., in the case of Wong Yang Sung, Plaintiff, vs. Tom Clark, Attorney General of the United States, and Watson B. Miller, United States Commissioner of Immigration and Naturalization Service, Defendants. It is our understanding that there have been one or two other decisions elsewhere which we have not received which are in accord with this decision—that is to say, opposed to the Goldsborough decision with reference to the Gerhardt Eisler case.

Yours very truly,
For the District Director

/s/ STAN OLSON,
Chief, Expulsion Section.

Encl.

In the District Court of the United States for the
District of Columbia, Civil Division

H. C. 3420

WONG YANG SUNG, 656 Pennsylvania Avenue,
S.E., Washington, D. C.

Plaintiff,
vs.

TOM CLARK, Attorney General of the United
States and WATSON B. MILLER, United
States Commissioner of Immigration and Natur-
alization, both of Washington, D. C.,
Defendants.

Washington, D. C., July 28, 1948

The above entitled matter came on for a hearing
on a petition for a writ of Habeas Corpus, before
the Honorable Alexander Holtzoff, Associate Jus-
tice, sitting as Motions Judge, at 11:45 a.m.

Appearances: In behalf of the plaintiff; Thomas
Farrell, Esq., Leo J. Nichaloski, Esq., present. In
behalf of the defendants: Oliver Dibble, Esq.,
United States Attorney.

ORAL CONCLUSIONS OF THE COURT

The Court: This is a writ of habeas corpus to
review an order of deportation. The petitioner,
whose deportation has been ordered by the Attorney
General of the United States pursuant to the pro-
visions of the Immigration Laws, objects that the
proceeding was not held and conducted in accord-
ance with the provisions of the Administrative
Procedure Act.

Section 7 of the Administrative Procedure Act, U. S. Code, Title 5, Section 1006, on which the petitioner relies, requires statutory hearings to be conducted before an examiner appointed pursuant to the provisions of the Act. The hearing in this case, as is customary in all Immigration deportation proceedings, was conducted by an Inspector or Board of Inspectors of the Immigration Service. If the requirements of the Administrative Procedure Act are applicable, the hearing was not properly conducted.

The Court, however, feels that the Administrative Procedure Act does not apply to hearings under the Immigration Laws, in the light of the following provision of Section (a) of Section 7 of the Administrative Procedure Act, and I quote:

“Nothing in this chapter shall be deemed to supersede the conduct of specific classes of proceedings in whole or in part by or before boards or other officers specially provided for by, or designated pursuant to statute.”

Section 152 of Title 8 of the Immigration Law, which governs the authority and powers of Immigration Inspectors, provides that said Inspectors shall have power to administer oaths and to take and consider evidence touching the right of any alien to enter, re-enter, pass through or reside in the United States, and where such action may be necessary, make a written record of such evidence. In the light of this provision it seems to the Court that deportation proceedings are within the excep-

tion specially specified in Section 7(a) of the Administrative Procedure Act, because it is "a specific class of proceeding before officers specially provided for by, or designated pursuant to statute."

In the light of this, the Court feels that immigration deportation hearings may be properly conducted by Immigration Inspectors and that the requirement as to hearing before specially appointed examiners as provided by the Administrative Procedure Act, does not apply.

The writ will be dismissed.

EXHIBIT "E"

AFFIDAVIT OF LLOYD E. McMURRAY
State of California,
City and County of San Francisco—ss.

Lloyd E. McMurray, being first duly sworn, deposes and says:

That he is an attorney-at-law with the firm of Gladstein, Andersen, Resner & Sawyer and one of the attorneys for plaintiffs herein; that deportation proceedings have in the past been conducted by the defendants herein against the plaintiffs herein in conformity with the usual practice of the defendants;

That the said proceedings were conducted without regard to the requirements of the Administrative Procedure Act, 60 Stat. 244, 5 U.S.C.A. §§ 1001 to 1011 and particularly §§ 1004, 1006, 1007 and 1010 thereof.

That on or about the 18th day of May, 1948, after the plaintiffs herein had objected to failure to

comply with the terms of the said Administrative Procedure Act, and after the decision of the United States District Court for the District of Columbia in the case of Gerhart Eisler, et al. vs. Tom C. Clark, et al, Civil Action No. 1173-48, the proceedings against the plaintiffs herein were suspended.

That subsequently, on or about the 9th day of September, 1948, defendants herein ordered the plaintiffs herein to appear on various dates for the purpose of continuing the said deportation proceedings;

That your affiant is informed and believes and on such information and belief alleges that defendants herein threaten and intend to continue the said deportation proceedings against plaintiffs herein without regard to the provisions of the said Administrative Procedure Act.

/s/ LLOYD E. McMURRAY.

Subscribed and sworn to before me this 5th day of October, 1948.

(Seal) /s/ ALICE C. MORSE,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Oct. 5, 1948.

[Title of District Court and Cause.]

MOTION IN OPPOSITION TO PLAINTIFFS' REQUEST FOR RESTRAINING ORDER

Comes now I. F. Wixon, individually, and as District Director, Immigration and Naturalization Service, District Thirteen, and moves the Court to deny the prayer for restraining order by plaintiffs against him in the above-entitled matter for the following reasons:

1. He is not a proper party defendant individually or officially.
2. The prayer of the plaintiffs is that the defendant be enjoined from the performance of an official and administrative act over which he has no control.
3. The complaint in this action states no cause of action against I. F. Wixon, individually or officially.
4. Each and every one of plaintiffs, if taken into custody, has a remedy for any claim of illegal custody under a writ of habeas corpus.
5. Defendant contends that the Administrative Procedure Act of June 11, 1946, (5 U.S.C. 1001-1011) has no application to hearings in deportation and exclusions proceedings under the immigration laws.
6. The defendant further contends that each and all of the individual plaintiffs has, in fact, been

accorded the substantial protection provided by the Administrative Procedure of June 11, 1946 Act.

7. It affirmatively appears from the complaint of plaintiffs that they have not exhausted their legal administrative remedies, and are therefore not entitled to the relief sought at this time.

/s/ FRANK J. HENNESSY,
United States Attorney.

/s/ EDGAR R. BONSALL,
Assistant U. S. Attorney,
Attorneys for Defendant.

[Endorsed]: Filed Oct. 7, 1948.

[Title of District Court and Cause.]

MEMORANDUM OPINION AND ORDER

Plaintiffs, alien residents of the United States against whom warrants have been issued charging them with membership in groups which advocate overthrow of the Government of the United States by force and violence, and with personal advocacy of such overthrow, seek to restrain defendant from conducting deportation proceedings against them. The grounds relied upon for the relief prayed for are in substance that the defendant has failed to appoint or assign a trial examiner to conduct hearings in accordance with the provisions of the Administrative Procedures Act and that the defendant is without right, authority or jurisdiction to proceed with the hearings under said warrants of arrest. 5 U.S.C.A. 1001 et seq. (hereinafter referred to as the Act).

Several preliminary objections have been urged on behalf of the defendant I. F. Wixon individually and as Director of Immigration and Naturalization Service.

First, that he is not a proper party individually or officially, and that the Attorney General of the United States should have been joined herein. This contention has been passed upon adversely to the claim of defendant in the recent case of Williams v. Fanning, 332 U. S. 490.

Secondly, it is asserted that petitioners have not exhausted their administrative remedies. Petitioners, at the threshold of the controversy, contend that the proceedings about to be conducted before the Immigration Service are without right, authority or jurisdiction in the light of the Administrative Procedures Act. If, in law, their contention is correct, it would seem purposeless to require petitioners to expend their energies in a hearing before the Immigration Service if at the consummation thereof it appeared to a reviewing court that the jurisdictional premise is absent. We have concluded that in the light of the contentions urged, and under all of the circumstances present, petitioners are not obliged to exhaust their administrative remedies and are properly before this court insofar as a test of the jurisdiction is concerned.

We now pass to the major contention: The Administrative Procedures Act under Section 7(a), 5 U.S.C.A. 1006(a), creates the following exception which is applicable herein: "Nothing in this Chapter shall be deemed to supersede the conduct of specified classes of proceedings in whole or part by

or before boards or other officers specially provided for by or designated pursuant to statute."

It is manifest from a review of the Congressional proceedings antedating the enactment of the Administrative Procedures Act, and the clear context of the Act itself, that it was not the intention of Congress to interfere with or usurp traditional statutory proceedings of this nature conducted by the Immigration Service.

We conclude that the Administrative Procedures Act is not applicable herein and that petitioners have their remedies, looking toward due process, as integrated under 8 U.S.C.A. 152.¹ So other courts have held.²

The weight of current authority, at least in the trial courts, fortifies the conclusion we have reached.

Accordingly, the application for injunction is denied and the complaint is dismissed on the ground as heretofore indicated that the procedures of the Immigration Service fall within the exception specified in Section 7(a), *supra*, of the Act.

Dated December 20, 1948.

/s/ GEORGE B. HARRIS,
United States District Judge.

¹ *Loufakis v. United States*, 81 F. 2d 966; *Graham v. United States*, 99 F. 2d 746, 748.

² *Wong Yan Sun v. Clark*, 80 F. S. 235; *Obum v. Watkins*, S.D.N.Y. 45577; *Wong So Wan v. Wixon*, N.D. Cal. 28214-G; Cf. *Lee Tack v. Clark*, S.D.N.Y. 26279; Cf. *Azzollini v. Watkins*, S.D.N.Y. 47420.

[Endorsed]: Filed Dec. 20, 1948.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Nat Yanish, William Heikkila, John Voich, John Diaz, Herman Lansburg and Frank Carlson, plaintiffs above named, hereby appeal to the Court of Appeals for the Ninth Circuit from the order of the above entitled Court denying plaintiffs' application for an injunction and dismissing the complaint herein, made and entered in this action on the 20th day of December, 1948.

Dated December 28, 1948.

GLADSTEIN, ANDERSEN,
RESNER & SAWYER,
By /s/ LLOYD E. McMURRAY,
Attorneys for Plaintiffs.

(Acknowledgment of Service.)

[Endorsed]: Filed Dec. 29, 1948.

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

Come now Nat Yanish, William Heikkila, John Voich, John Diaz, Herman Lansburg and Frank Carlson, plaintiffs and appellants above named and designate the following as the record on appeal in the above entitled matter:

1. Complaint filed herein on October 5, 1948, together with Exhibits A, B, C, D and E attached thereto.

2. The motion in opposition to plaintiffs' request for a restraining order filed herein on October 7, 1948.

3. Memorandum opinion and order decided and filed herein on December 20, 1948.

4. This designation of record on appeal.

Dated January 12, 1949.

GLADSTEIN, ANDERSEN,
RESNER & SAWYER,
By /s/ LLOYD E. McMURRAY,
Attorneys for Plaintiffs.

(Acknowledgment of Service.)

[Endorsed]: Filed Jan. 14, 1949.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing documents, listed below, are the originals filed in this Court, in the above-entitled case, and that they constitute the Record on Appeal herein as designated by the Appellants.

Complaint for Review of Agency Action and for Injunctive Relief.

Motion in Opposition to Plaintiff's Request for Restraining Order.

Memorandum Opinion and Order.

Notice of Appeal.

Designation of Record on Appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 2nd day of February, A.D. 1949.

(Seal)

C. W. CALBREATH,
Clerk.

[Endorsed]: No. 12174. United States Court of Appeals for the Ninth Circuit. Nat Yanish, William Heikkila, John Voich, John Diaz, Herman Lansburg and Frank Carlson, Appellants, vs. I. F. Wixon, Individually and as District Director, Immigration and Naturalization Service, Department of Justice, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed February 5, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit

No. 12,174

NAT YANISH, et al.,

Appellants,

vs.

I. F. WIXON, etc.,

Appellee.

STATEMENT OF POINTS ON APPEAL AND
DESIGNATION OF RECORD

Come now Nat Yanish, William Heikkila, John Voich, John Diaz, Herman Lansburg and Frank Carlson, appellants herein, and state the points upon which they will rely upon appeal herein, and the portions of the record necessary for consideration thereof, as follows:

1. The Court erred in denying plaintiffs' prayer for an injunction.

2. The Court erred in dismissing the complaint.

For consideration of the above points the entire certified record is hereby designated.

Dated February 21, 1949.

GLADSTEIN, ANDERSEN,
RESNER & SAWYER,
By /s/ LLOYD E. McMURRAY,
Attorneys for Appellants.

(Acknowledgment of Service.)

[Endorsed]: Filed February 23, 1949. Paul P.
O'Brien, Clerk.